

CONSENT CALENDAR – AGENDA ITEM NO. 3
EXECUTIVE COMMITTEE MEETING
January 26, 2012

TO: Executive Committee, Orange County Fire Authority

FROM: Craig Kinoshita, Assistant Chief Operations Department

SUBJECT: **Approval of Sole Source Preferred Vendor – CareFusion Corporation for a Lease Agreement for Nine (9) Custom Automatic Medication (narcotic) Distribution Units**

Summary:

This item is submitted for the approval of a lease agreement for nine (9) custom automatic medication (narcotic) distribution units with CareFusion Corporation.

Recommended Action:

Authorize the Purchasing Manager to execute a new Lease Agreement for a period not to exceed 5 years with CareFusion in the amount of \$51,720 per year.

Background:

What is a custom automatic medication (narcotic) distribution unit?

The current system utilized by the OCFA for this purpose is known as the Pyxis system. This is a specially designed integrated system for the storage and distribution for medications designated as narcotics. This system includes biometric technology which is considered the first line of security. This scanning technology, including the ability to track dispensing activities from a central location, meets or exceeds current regulatory requirements for the storage and distribution of these medications.

How is this medication distribution system used by the OCFA?

Current DEA regulatory requirements mandate the proper storage, distribution and daily accountability of medications designated as narcotics. These medications are part of the authorized pharmacology inventory assigned to paramedic units. Presently, OCFA meets this regulatory mandate by utilization of the automated medication distribution unit, known as Pyxis. These units are placed strategically in nine (9) fire stations in OCFA's service area. These locations have been selected to ensure access by OCFA paramedic units as well as paramedic assessment units to provide for daily supply needs.

The Need to Replace the Existing System

CareFusion was the original vendor selected as part of a formal Request for Proposal process conducted by the Orange County Fire Authority (BID #MD1263). The medication distribution/storage units have functioned as intended. CareFusion is currently the exclusive vendor of this automated Pyxis (Specialty Station) narcotic distribution system. CareFusion has confirmed that their ability to continue to support this system may be an issue soon as technology advancements render our current system obsolete.

As a result, staff determined it was best to identify a replacement system at this time rather than extending service agreements on a potentially obsolete system.

Sole Source Justification

The proposed agreement is a sole-source agreement. OCFA's purchasing ordinance authorizes sole-source purchases of supplies, services, and equipment when the Purchasing Manager, with the approval of the Fire Chief, determines the requested services, supplies and/or equipment "can feasibly be obtained from only one source." After researching the matter, staff has determined that the only system that provides both biometric scanning and centralized computer tracking is CareFusion's proprietary system. The combination of biometrics and centralized tracking substantially enhances the security of the narcotic distribution system. In addition, the system is proprietary to CareFusion, so no alternative suppliers exist for the system. As a result, this service and equipment can feasibly be obtained only from CareFusion.

As a result of negotiations, CareFusion has agreed to replace OCFA's existing (9) Pyxis units with an upgrade to the Med Station 4000 2 medication distribution system that provides the biometric security features. In addition, the vendor has also agreed to lower the price of the lease and service plan from the prior contract on the Pyxis system. The Med Station 4000 2 system meets or exceeds OCFA's operating requirements and also has the capacity to evolve with technology enhancements as they become available for this operating system.

Therefore, a sole source preferred vendor authorization is necessary. Staff recommends an extension of the existing lease agreement (with the upgrade to Med Station 4000 2) for not to exceed five (5) years.

The annual lease and support costs including tax were \$61,288.20 annually under the existing contract. This new proposed agreement realizes a significant cost savings of \$9,568 annually and \$47,840 over the 5-year life of the contract. The new annual contract amount (\$51,720) includes the lease of \$3,000 per month and support costs of \$1,000 per month plus sales tax.

This new system meets or exceeds OCFA's operating requirements and employs the latest technology in the area of biometrics and computer technology and has the capacity to evolve with technology enhancements as they become available for this operating system.

Impact to Cities/ County:
Not Applicable.

Fiscal Impact:

It is estimated that OCFA will save \$2,400 in the current fiscal year by entering into this new agreement.

Staff Contacts for Further Information:

Scott Brown, Battalion Chief/Emergency Medical Services

Operations Department

scottbrown@ocfa.org

(714) 573-6071

Debbie Casper, Purchasing Manager

Business Service Department

debbiecasper@ocfa.org

(714) 573-6643

Attachments: (On file in the Office of the Clerk)

1. CareFusion Rental Agreement and Support Agreement
2. CareFusion Master Rental Terms and Conditions



Rental Agreement and Support Agreement

Rental Agreement Date: November 30, 2011

Customer Information:

Sold To	Ship To	Bill To
Legal Name: ORANGE COUNTY FIRE AUTHORITY		Same as (circle one): Sold To Ship To
DBA: ORANGE COUNTY FIRE AUTHORITY	ORANGE COUNTY FIRE AUTHORITY	
St. Address: 1 FIRE AUTHORITY RD	1 FIRE AUTHORITY RD	
City, St., Zip: Irvine, CA 92602	Irvine, CA 92602	
Customer #: 206309	206309	

The Rental Agreement and Support Agreement stated in this document are two separate and distinct contracts between CareFusion and Customer. The two contracts are stated in this single document for administrative convenience only.

Rental Agreement: CareFusion shall rent to Customer and Customer shall rent from CareFusion each Pyxis Product identified on the attached Pyxis Product Schedule on the Rental Terms stated herein. This Rental Agreement incorporates the latest Master Rental Terms and Conditions executed by the Parties as of the full execution of this Rental Agreement. CareFusion shall license, not rent, any software identified above or integrated into any Pyxis Product identified above.

Support Agreement: CareFusion shall support and Customer shall accept support of each Pyxis Product identified on the attached Pyxis Product Schedule on the Support Terms stated herein. This Support Agreement incorporates the latest Master Support Terms and Conditions executed by the Parties as of the full execution of this Support Agreement.

Intellectual Property Ownership: CareFusion retains all exclusive rights in the Interface Services, the technical side of the interface(s) and related materials, if any, including any patent, copyright, trademark, trade secret or any other intellectual property right or source code related to the performance of the Interface Services. Customer shall have no claim of any intellectual property right as referenced in the preceding sentence. CareFusion shall retain the right to provide similar services to other customers and grants Customer a non-exclusive license to use any intellectual property created by CareFusion that is integrated in the functioning of a Pyxis® Product.

Will a Purchase Order be required for payment of the financial obligations proposed under this agreement? (please circle)

Yes	No	Rental PO #:
		Support PO #:

Copies of this agreement will be sent to Ship To signer listed above.

When complete, additional copies will be sent to the following address:

Name: _____

St. Address: _____

City, St., Zip: _____

Each person signing this document represents that he/she intends to and has the authority to bind his/her respective Party to the Rental Agreement and the separate Support Agreement.

ORANGE COUNTY FIRE AUTHORITY

Sign: _____

Print: _____

Title: _____ Date: _____

CAREFUSION SOLUTIONS, LLC

ATTN: CONTRACTS, 3750 TORREY VIEW CT, SAN DIEGO, CA 92130 888.876.428

Sign: _____

Print: _____

Title: _____ Date: _____

This Agreement is not valid until executed by both Customer and CareFusion Solutions, LLC.

Document #: 206309 206309 4000 Med 2011-12-16 160450 11051

11051

Sales Associate:

Terry Kuzma-Gottron 619-249-9582

Version 6.1.4



Rental Agreement and Support Agreement Pyxis Product Schedule: Conversion

Customer Name: ORANGE COUNTY FIRE AUTHORITY
Customer Number: 206309
Rental Agreement Date: November 30, 2011

GPO: Standard
HSPA: N/A
Support Level: Basic Svc Support Term: 60 mo

Notes:		Discounts: Product + *A GPO: *B QTY:										*D Initial Installation Incentive:				Support + *A GPO 0.0% *B QTY 5.0%					
		+Product discounts are applied to applicable products										+Support discounts are applied to all Support list prices									
		The fees stated in this Agreement are offered by CareFusion Solutions, LLC for acceptance by the Customer for a period expiring on: January 29, 2012																			
Type of Conversion: HC		Current Agreement										New Rental Agreement									
Unit Type	Contract Number	Serial Number	Current Location in Hospital	Product Number	Product Name	Install Code	Intentionally Blank	Rent Start	Initial Term	Monthly		New Term: 60				Monthly Rental Fee			Monthly Support		
										Product Price*	Support	Proposed Location	Ship To	Product Number	Product Name	List	*Applied Disc	Net	List	Net	
M	6033780	8000122851	B3FS21	N4MB2DRW2	N4 Mn2dr 2PremBio	UPU		Oct-06	60	\$ 374	\$ 85	B3FS21	206309	M4MB2DR7W2	MedStation 4000 2 Drawer Main with up to 2 Cubie/ Mini Drawers, BioID	\$ 468	B-3 D-42.2	\$ 262	\$ 96	\$ 91	
M	6033780	8000122852	B2FS10	N4MB2DRW2	N4 Mn2dr 2PremBio	UPU		Oct-06	60	\$ 374	\$ 85	B2FS10	206309	M4MB2DR7W2	MedStation 4000 2 Drawer Main with up to 2 Cubie/ Mini Drawers, BioID	\$ 468	B-3 D-42.2	\$ 262	\$ 96	\$ 91	
M	6033780	8000122853	B1FS64	N4MB2DRW2	N4 Mn2dr 2PremBio	UPU		Oct-06	60	\$ 374	\$ 85	B1FS64	206309	M4MB2DR7W2	MedStation 4000 2 Drawer Main with up to 2 Cubie/ Mini Drawers, BioID	\$ 468	B-3 D-42.2	\$ 262	\$ 96	\$ 91	
M	6033780	8000122854	B7FS45	N4MB2DRW2	N4 Mn2dr 2PremBio	UPU		Oct-06	60	\$ 374	\$ 85	B7FS45	206309	M4MB2DR7W2	MedStation 4000 2 Drawer Main with up to 2 Cubie/ Mini Drawers, BioID	\$ 468	B-3 D-42.2	\$ 262	\$ 96	\$ 91	
M	6033780	8000122855	B5FS36	N4MB2DRW2	N4 Mn2dr 2PremBio	UPU		Oct-06	60	\$ 374	\$ 85	B5FS36	206309	M4MB2DR7W2	MedStation 4000 2 Drawer Main with up to 2 Cubie/ Mini Drawers, BioID	\$ 468	B-3 D-42.2	\$ 262	\$ 96	\$ 91	
M	6033780	8000122856	B8FS63	N4MB2DRW2	N4 Mn2dr 2PremBio	UPU		Oct-06	60	\$ 374	\$ 85	B8FS63	206309	M4MB2DR7W2	MedStation 4000 2 Drawer Main with up to 2 Cubie/ Mini Drawers, BioID	\$ 468	B-3 D-42.2	\$ 262	\$ 96	\$ 91	
M	6033780	8000122857	B6FS9	N4MB2DRW2	N4 Mn2dr 2PremBio	UPU		Oct-06	60	\$ 374	\$ 85	B6FS9	206309	M4MB2DR7W2	MedStation 4000 2 Drawer Main with up to 2 Cubie/ Mini Drawers, BioID	\$ 468	B-3 D-42.2	\$ 262	\$ 96	\$ 91	
M	6033780	8000122858	B4FS22	N4MB2DRW2	N4 Mn2dr 2PremBio	UPU		Oct-06	60	\$ 374	\$ 85	B4FS22	206309	M4MB2DR7W2	MedStation 4000 2 Drawer Main with up to 2 Cubie/ Mini Drawers, BioID	\$ 468	B-3 D-42.2	\$ 262	\$ 96	\$ 91	
M	6033780	8000122624	OCFA	N4M3DO0DRNV	N4 SglMn RAD+0Dr NV	UPU		Oct-06	60	\$ 324	\$ 57	OCFA	206309	M4MB5DR7W2	MedStation 4000 4 Drawer Main with up to 2 Cubie/ Mini Drawers, Permanent Bin Drawer, BioID	\$ 684	B-3 D-42.2	\$ 383	\$ 96	\$ 91	
C	6033780	8000123969	OCFA	N4FC	Fac Console v4.x	UPU		Oct-06	60	\$ 158	\$ 57	OCFA	206309	M4C7NWA	MedStation 4000 Non-Profile Console with up to 1 printer, monitor, UPS	\$ 466	B-3 D-42.2	\$ 259	\$ 96	\$ 90	
O	6033780	123427	OCFA	BIDP	NM 3.0 BioID Upg	CNL		Oct-06	60	\$ -	\$ -	OCFA	206309		Return Pyxis Product to CareFusion	\$ -		\$ -	\$ -	\$ -	
M	6052510	12821262	B6FS29	N4MB2DRW2	N4 Mn2dr 2PremBio	UPU		Nov-08	60	\$ 381	\$ 91	B6FS29	206317	M4MB2DR7W2	MedStation 4000 2 Drawer Main with up to 2 Cubie/ Mini Drawers, BioID	\$ 468	B-3 D-42.2	\$ 262	\$ 96	\$ 91	
Total Existing Equipment:						1 ATR		\$ 3,855	\$ 885	Total Conversion Equipment:						\$ 5,362	\$ 3,000	\$ 1,000			
																		*Product Price may represent monthly rental fee or purchase price as applicable to the original agreement			

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Project

Document #: 206309 206309 4000 Med 2011-12-16 160450 11051

Carefusion Use Only: STD PPL 11-2011

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Customer Initials: _____

Date: _____
Customer: _____

These Master Rental Terms and Conditions shall be incorporated into each Rental Agreement executed by CareFusion Solutions, LLC (“**CareFusion**”) and the customer identified in the signature block below (“**Customer**”), each a “**Party**” and, collectively, the “**Parties**”. Each Rental Agreement shall constitute a separate, independent contract between the Parties. “**Pyxis Products**” means, collectively, the Pyxis® products identified in any single Rental Agreement, including the software identified in the Rental Agreement, integrated into any of the Pyxis Products or a software application delivered by CareFusion to Customer (collectively, “**Software**”). Capitalized terms used herein shall have the meanings defined herein or as used in the Rental Agreement. Each separate Rental Agreement, together with these incorporated Master Rental Terms and Conditions, shall be referred to as a “**Rental Agreement**” herein.

1. **Delivery.** CareFusion shall deliver each Pyxis Product to the “ship-to” location stated in the Rental Agreement.
2. **Risk of Loss.** From the time Customer receives delivery of a Pyxis Product until CareFusion accepts return delivery of the Pyxis Product, Customer shall be responsible for: (a) any loss of or damage to the Pyxis Product from any cause other than normal wear and tear (“**Loss**”); and (b) obtaining and maintaining throughout the term of the Rental Agreement All Risk Property Insurance in an amount equal to full replacement value covering the Pyxis Products. Customer shall not be responsible for any portion of Loss caused by CareFusion’s negligence or reckless or willful misconduct.
3. **Conditional Security Agreement.** If a Rental Agreement is determined not to constitute a true lease, then the Rental Agreement shall be a security agreement with respect to the Pyxis Products and all accessions, substitutions, replacements therefore, and proceeds thereof (including insurance proceeds) to secure all obligations pursuant to the Rental Agreement.
4. **Implementation.** Each Party shall perform the Party’s respective implementation activities stated below (“**Implementation Activities**”) for each Pyxis Product pursuant to the Implementation Schedule attached and incorporated into the Rental Agreement (“**Implementation Schedule**”):
 - (a) **Infrastructure.** Customer shall provide adequate personnel, clean commercial power, necessary communication lines, and sufficient clean space (maintained at a temperature between 50°F and 80°F) for all Implementation Activities. Customer shall appoint a System Manager who shall be available during business hours and responsible to define policies/procedures and to coordinate planning, installation, and set-up.
 - (b) **Installation.** CareFusion shall stage and install the Pyxis Product at the ship-to location set forth in the Rental Agreement.
 - (c) **Interfaces.** CareFusion shall provide CareFusion’s side of each interface identified in the Rental Agreement (“**Interface**”). Customer shall promptly test each Interface to verify that the Interface functions properly. Customer’s sole remedy related to Interface functionality shall be for CareFusion to modify CareFusion’s side of the Interface to provide full functionality.
 - (d) **Documentation.** CareFusion shall provide Customer one copy of the current user manual for the Pyxis Product.
5. **Acceptance.** A Pyxis Product shall be deemed accepted by Customer (“**Accepted**”) when the Implementation Activities regarding the Pyxis Product are completed and the Pyxis Product functions in accordance with the material specifications of its user manual (“**Properly Performing**”). Customer shall execute an electronic or paper Equipment Confirmation for the Pyxis Product on the date the Pyxis Product is Accepted.
6. **Initial Rental Term.** The “**Rental Term**” for a Pyxis Product consists of any period of time that CareFusion leases the Pyxis Product to Customer pursuant to the Rental Agreement. The period of the initial Rental Term for each Pyxis Product shall be the number of months stated in the Rental Agreement for the Pyxis Product. The initial Rental Term for a Pyxis Product shall commence on the Term Begin Date stated in the Implementation Schedule. If there is no Implementation Schedule or if there is no Term Begin Date stated in the Implementation Schedule, then the initial Rental Term for a Pyxis Product shall commence on the first day of the month following the date the Pyxis Product is Accepted.
7. **Automatic Continuation of Rental Term.** If, at least sixty (60) days prior to the conclusion of the initial Rental Term for a Pyxis Product, Customer delivers notice that Customer shall return the Pyxis Product at the conclusion of that initial Rental Term, then that Rental Term shall expire at the end of the initial Rental Term. If Customer does not deliver notice pursuant to the preceding sentence, then the following terms shall apply at the end of the initial Rental Term: (i) the Rental Term shall continue on a month-to-month term basis; (ii) the Monthly Rental Fee shall be the month-to-month Rental Fee stated for the Pyxis Product in the then-current Pyxis Product Price Catalog; and (iii) either Party may terminate the continued Rental Term effective upon thirty (30) days’ prior notice.

- 8. Payment of Monthly Rental Fees.** Customer shall pay the Net Monthly Rental Fee stated in the Rental Agreement (“**Monthly Rental Fee**”) for each Pyxis Product by check, wire, ACH or EFT on the first day of each month during the Rental Term.
- 9. Taxes.** Monthly Rental Fees do not include any taxes. Customer shall pay when due any sales, use, rental, property, or other taxes or assessments of any kind (other than any tax based solely on CareFusion’s net income) and related interest and penalties (except those caused by CareFusion’s failure to collect or remit such taxes) arising from the transactions pursuant to the Rental Agreement. If CareFusion pays an amount that Customer is obligated to pay under this Section, then Customer shall promptly reimburse CareFusion.
- 10. Cash Application; Late Charges.** CareFusion shall apply all payments according to CareFusion’s then-current cash application procedures. If Customer does not pay an amount due to CareFusion pursuant to any provision of the Rental Agreement on or before the due date, then Customer shall pay a late charge on the unpaid amount at the rate of one and one-half percent (1.5%) per month, prorated on a daily basis, or the highest rate allowed by law (whichever is lower).
- 11. Use of Pyxis Products.** Customer shall have possession of each Pyxis Product during the Rental Term for the Pyxis Product. Customer shall use each Pyxis Product only (i) during a Rental Term for the Pyxis Product; (ii) at the specific location in Customer’s facility at which the Pyxis Product is implemented (unless CareFusion provides prior written approval for a different location); (iii) for Customer’s internal business purposes; (iv) in the manner described in the user manual for the Pyxis Product; and (v) in accordance with applicable laws and regulations. Customer shall not modify a Pyxis Product and shall not install or use any software not provided by CareFusion on a Pyxis Product without CareFusion’s written consent.
- 12. Grant of Limited Software License.** CareFusion grants Customer a limited, non-exclusive, non-transferable license to use the Software. Customer (i) shall use integrated Software only as an integrated part of Pyxis Products; (ii) shall not separate integrated Software from any Pyxis Product; (iii) shall not translate, disassemble, decompile, reverse engineer, alter or modify the Software; (iv) shall not make any copies of the Software or its documentation (except one (1) copy for back-up or archival purposes); and (v) may use the Software only during the Rental Term of the Software or of the Pyxis Product into which the Software is integrated. The Software is owned or licensed by CareFusion and is protected by copyright and other laws. Except as provided in Section 26, Customer shall not sell, assign, sublicense, transfer or disclose or permit access to the Software to a third party.
- 13. Intellectual Property Indemnity.**
- (a) Notice and Cooperation. Customer shall deliver notice to CareFusion promptly after Customer receives actual notice of any demand, claim, suit or proceeding against Customer that claims that a Pyxis Product used by Customer consistent with the Rental Agreement infringes any patent, copyright or other proprietary right of a third party (each, an “**Infringement Claim**”). Customer shall authorize CareFusion to have sole control of the defense and/or settlement of each Infringement Claim, provided that CareFusion shall obtain Customer’s prior written consent (not to be unreasonably withheld or delayed) before agreeing to settle an Infringement Claim in a manner that adversely affects Customer’s right to use a Pyxis Product. Upon CareFusion’s request, Customer shall provide reasonable cooperation in the defense and/or settlement of the Infringement Claim.
- (b) Indemnity. CareFusion at its expense shall (i) defend the Infringement Claim; (ii) pay any damages and costs assessed against Customer (or payable by Customer pursuant to a settlement agreement) arising out of the Infringement Claim; and (iii) reimburse Customer for reasonable costs and expenses incurred by Customer to provide the cooperation requested by CareFusion pursuant to Section 13(a).
- This Section 13 states Customer’s exclusive remedy and CareFusion’s total liability to Customer regarding any Infringement Claim.
- 14. Option to Modify.** If CareFusion determines that a Pyxis Product might infringe any United States patent, copyright, trade secret or other proprietary right of a third party, then CareFusion may, at its discretion, replace the Pyxis Product with a substantially equivalent Pyxis Product or modify the Pyxis Product in a manner that does not adversely affect the performance or functionality of the Pyxis Product.
- 15. Data.** “**Data**” means, collectively, data contained in the data files of a Pyxis Product or data that is created or stored through the use of a Pyxis Product. Subject to the Business Associate Agreement in effect between the Parties as of the date of the Rental Agreement, Customer grants CareFusion a perpetual, royalty-free license to use reasonable means to access Data and to use Data for any lawful purpose. If Data collected by CareFusion contains Protected Health Information as defined by 45 C.F.R. §160.103, then CareFusion shall, prior to using or disclosing that Data, de-identify that Data pursuant to 45 C.F.R. §164.514 and dissociate that Data from Customer.
- 16. Limited Warranty.** For a period of ninety (90) days after the date a Pyxis Product is Accepted, the Pyxis Product shall perform in accordance with the material specifications of its user manual (the “**Limited Warranty**”). If, because of a defect in workmanship or material, the Pyxis Product fails to perform in accordance with the Limited Warranty, then, as Customer’s sole remedy (in addition to the right to indemnification pursuant to Section 17), CareFusion shall promptly repair or replace, at

CareFusion's option, the Pyxis Product or any part thereof. **EXCEPT FOR THE LIMITED WARRANTY, CAREFUSION DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED (INCLUDING ANY WARRANTY OF MERCHANTABILITY) REGARDING THE PYXIS PRODUCTS.**

- 17. Mutual Indemnification.** Each Party (the “**Indemnifying Party**”) shall indemnify and hold the other Party (the “**Indemnified Party**”) harmless from and shall defend the Indemnified Party against any claim asserted against the Indemnified Party for losses, injuries, or damages caused by the Indemnifying Party's conduct. In addition, CareFusion shall indemnify and defend Customer against any claim asserted against Customer by a third party based upon a Pyxis Product that has not been modified other than by or on behalf of CareFusion.
- 18. Exclusion of Consequential Damages.** **NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS OR PROFITS, EVEN IF A PARTY RECEIVES NOTICE IN ADVANCE THAT THESE KINDS OF DAMAGES MIGHT RESULT.** This Section shall not limit a Party's right to indemnification from the other Party pursuant to Section 13 or Section 17.
- 19. Default by CareFusion.** If, prior to Acceptance of a Pyxis Product, CareFusion fails to cure any breach of CareFusion's Implementation Activities regarding that Pyxis Product within thirty (30) days (the “**Cure Period**”) after delivery of notice from Customer identifying the conduct in breach, then, if Customer delivers notice to CareFusion (the “**Cancellation Notice**”) within ten (10) days after the expiration of the Cure Period, Customer may elect to cancel Customer's obligation to rent that Pyxis Product. If Customer timely elects to exercise the right of cancellation provided by this Section, then (i) CareFusion shall have no further obligation to Customer regarding the Pyxis Product; (ii) the Rental Term for the Pyxis Product shall be cancelled effective as of the Cancellation Notice; and (iii) Customer shall promptly permit CareFusion to obtain possession of the Pyxis Product and any equipment or Software provided by CareFusion to Customer related to the Pyxis Product.
- 20. Default by Customer.** If (i) Customer fails to pay any payment required by the Rental Agreement, or by any other agreement between the Parties, within ten (10) days after CareFusion delivers notice to Customer stating that the payment is past due or (ii) Customer fails to cure any other breach of the Rental Agreement within thirty (30) days after delivery of notice from CareFusion, then CareFusion may by notice, to the extent permitted by applicable law and in addition to and without prejudice to any other remedy available at law or equity, elect to (i) cancel one or more Rental Terms and require Customer to make the related Pyxis Products available for repossession by CareFusion at a reasonably convenient location and/or (ii) recover liquidated damages from Customer in the amount of the present value (calculated using a discount rate of six percent (6%) per annum) of the unpaid balance of all Monthly Rental Fees for all unexpired Rental Terms under the Rental Agreement.
- 21. Absence of Defenses to Payment.** Customer's obligation to pay Monthly Rental Fees is unconditional and non-cancelable. Customer shall not be entitled to any abatement or reduction of Monthly Rental Fees for any reason. Customer shall make Monthly Rental payments when due regardless of any existing or future setoff or claim that might be asserted by Customer. If CareFusion's assignee commences an action to collect any amount due pursuant to the Rental Agreement, then Customer shall not assert any setoff or counterclaim against CareFusion's assignee.
- 22. Removal of Customer Property.** If Customer is required to relinquish possession of a Pyxis Product to CareFusion for any reason pursuant to the Rental Agreement, then Customer shall, without damaging the Pyxis Product, promptly remove all medications, data and Customer's property from the Pyxis Product.
- 23. Return of Pyxis Products.** At the conclusion of the Rental Term for any Pyxis Product, Customer shall (a) accept ownership and acknowledge receipt of any data device that CareFusion removes from the Pyxis Product and tenders to Customer; and then (b) promptly and properly crate and ship the Pyxis Product to CareFusion.
- 24. Lexi-Comp Databases.** This Section applies only to Lexi-Comp Licensed Databases (“**Databases**”), if any, contained in a Pyxis Product and shall constitute the exclusive statement of terms and conditions between Customer, CareFusion, and Lexi-Comp, Inc. or Lexi-Comp, Inc.'s parents, subsidiaries, affiliates, or suppliers (collectively, “**Lexi-Comp**”) related to the Databases.
- (a) Ownership; License Grant. The Databases are owned by Lexi-Comp and are licensed, not sold, by CareFusion to Customer. The Databases are provided to Customer subject to the rights and restrictions stated in the “Grant of Limited Software License” section herein applicable to integrated Software, as modified by this Section. Customer shall not copy any portion of the Databases for resale. Customer shall not post any portion of the Databases on public bulletin boards, web sites, Internet domains, or online chatrooms. Customer may print out individual articles containing only insubstantial portions of the Databases for Customer's personal educational use if Customer includes a source reference to Lexi-Comp and its copyright notice. CareFusion shall not update the data sets contained in the Databases; Customer may contact Lexi-Comp to attempt to procure updated data sets for the Databases. However, Pyxis MedStation™ 3000, 3500 and 4000 system customers shall receive quarterly Lexi-Comp updates to Databases at no additional Customer cost. Customer shall be responsible for installing the quarterly Lexi-Comp updates to Databases.

(b) Use of Professional Judgment. Customer should consult a variety of information sources before making any treatment decision. Customer should check the product information sheet accompanying each drug to verify conditions of use and should identify any changes in dosage schedule or contraindications. Information in the Databases is not a substitute for individual patient assessment based upon Customer's examination of each patient and consideration of laboratory data and other factors unique to the patient. Customer shall bear full responsibility for the appropriate use of the information contained in the Databases.

(c) Limited Warranty. THE DATABASES ARE PROVIDED "AS IS" AND WITH ALL FAULTS. CAREFUSION AND LEXI-COMP DISCLAIM ANY AND ALL WARRANTIES RELATED TO THE DATABASES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.

(d) Limitation of Liability. NEITHER LEXI-COMP NOR CAREFUSION SHALL BE LIABLE TO CUSTOMER FOR INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES RELATED TO ANY CLAIM RELATED TO THE DATABASES, INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS OR PROFITS, EVEN IF LEXI-COMP OR CAREFUSION RECEIVES NOTICE IN ADVANCE THAT THESE KINDS OF DAMAGES MIGHT RESULT. LEXI-COMP'S AND CAREFUSION'S AGGREGATE CUMULATIVE LIABILITY TO CUSTOMER PURSUANT TO ANY AND ALL CLAIMS RELATED TO THE DATABASES SHALL NOT EXCEED THE AGGREGATE NET LICENSE FEES TO BE PAID BY CUSTOMER TO CAREFUSION FOR THE DATABASES.

- 25. Governing Law.** The Rental Agreement shall be governed by the laws of the state of the Customer's initial Notice Address, below, without regard to that state's conflicts of law provisions.
- 26. Assignment.** Subject to Section 27, neither Party may assign any rights or obligations under the Rental Agreement without the other Party's prior written consent, which shall not be unreasonably withheld, provided that either Party may upon delivery of notice assign all of such Party's rights and obligations under the Rental Agreement without the consent of the other Party to a related affiliate or upon the transfer of all or substantially all of such Party's assets, whether by merger, sale or otherwise.
- 27. Assignment of Right to Receive Payments.** CareFusion may assign some or all of CareFusion's right to receive payments under the Rental Agreement without Customer's consent. If CareFusion assigns CareFusion's right to receive payments under the Rental Agreement, then (a) Customer shall not hold any assignee liable for any of CareFusion's obligations under the Rental Agreement; (b) the rights of CareFusion's assignee shall not be subject to any claims, counterclaims, defenses or setoffs that Customer might possess against CareFusion; (c) Customer shall execute documents that CareFusion reasonably requests to confirm Customer's obligations under the Rental Agreement; and (d) Customer shall, if requested, make payments due under the Rental Agreement directly to the assignee.
- 28. Medication Handling.** CareFusion employees and agents ("**CareFusion Personnel**") shall not physically handle Customer's medications. Customer must be physically present and capable of observing CareFusion Personnel during any Implementation Activity or in any situation in which CareFusion Personnel have access to Customer's medications.
- 29. Discounts.** If CareFusion provides any discount, credit, rebate or other incentive regarding the Pyxis Products, then it is a "discount or other reduction in price" pursuant to the Medicare/Medicaid Anti-Kickback Statute. Each Party shall comply with the "safe harbor" regulations stated in 42 C.F.R. § 1001.952(h).
- 30. Notices.** Any notice from one Party to the other Party related to the Rental Agreement shall be in writing and delivered either by hand, overnight courier or first class mail (certified or registered, return receipt requested, postage prepaid) to the receiving Party's Notice Address stated below. A notice shall be deemed to be given when delivered if by hand or by overnight courier and three days after it is mailed if by certified or registered mail. Either Party may change its Notice Address upon delivery of notice to the other Party.
- 31. Confidentiality.** Except as required by law, Customer shall not disclose to a third party the terms of or issue any public statement regarding the Rental Agreement ("**Confidential Information**") without CareFusion's prior written approval. This confidentiality obligation shall not apply if Customer can reasonably demonstrate that any such Confidential Information (a) was in the public domain; (b) was received from a third party that lawfully possessed the Confidential Information; (c) was otherwise known by Customer prior to the disclosure of Confidential Information; or (d) was independently developed by Customer without reference to, exposure to, use of or disclosure of any Confidential Information. This confidentiality obligation shall survive the termination of the Rental Agreement.
- 32. Prevailing Party.** If a Party prevails against the other Party regarding any claim arising from the Rental Agreement, then the non-prevailing Party shall reimburse the prevailing Party for costs, expenses, and attorneys' fees reasonably incurred by the prevailing Party regarding such claim.

- 33. Severability.** If a court or other body of competent jurisdiction declares any term of the Rental Agreement invalid or unenforceable, then the remaining terms shall continue in full force and effect.
- 34. Non-Waiver.** No right created by the Rental Agreement shall be deemed waived unless specifically and expressly waived in a writing signed by the Party possessing the right.
- 35. Compliance with Laws.** The Parties shall comply with all federal and state laws and regulations applicable to their respective performance of the Rental Agreement.
- 36. Access to Records.** For a period of four (4) years after CareFusion has performed the Rental Agreement, CareFusion shall make available, upon written request of the Secretary of the Department of Health and Human Services, or upon request of the Comptroller General of the United States, or any of their duly authorized representatives (collectively, the “**Requesting Party**”), the Rental Agreement and any books, documents, and records necessary to certify the nature and extent of the costs paid by Customer to CareFusion pursuant to the Rental Agreement (“**Access**”). If CareFusion pays a subcontractor more than \$10,000 over a twelve (12) month period to perform the Rental Agreement, then CareFusion shall obligate the subcontractor to permit Access to the Requesting Party.
- 37. Applicable Terms of GPO Agreement.** If a Group Purchasing Organization agreement (“**GPO Agreement**”) is applicable to a Pyxis Product as of the date of the Rental Agreement and if the GPO Agreement states that identified terms of the GPO Agreement are incorporated into the Rental Agreement related to that Pyxis Product, then the identified terms of the GPO Agreement shall be incorporated into the Rental Agreement related to that Pyxis Product and shall supersede any conflicting term or condition in the Rental Agreement applicable to the Pyxis Product.
- 38. Vendor Policies.** CareFusion and its employees shall comply with Customer’s reasonable security rules, policies and procedures provided in writing and agreed to in advance by CareFusion (“**Vendor Policies**”). Customer shall notify CareFusion in writing of any substantive amendments to the Vendor Policies. Notwithstanding the foregoing, the Parties understand and agree that any alteration, modification or creation of additional obligations related to the purchase and delivery of Pyxis Products, or Customer’s payment obligations or termination rights under a Rental Agreement shall become effective only by a written amendment to the Master Rental Terms and Conditions or applicable Rental Agreement executed by both Parties.
- 39. Entire Agreement; Amendment.** The Rental Agreement incorporating these Master Rental Terms and Conditions constitutes the entire agreement and understanding of the Parties regarding the subject matter of the Rental Agreement and supersedes all prior written and oral agreements, proposals, and understandings between the Parties regarding the subject matter of the Rental Agreement. If any of Customer’s Vendor Policies conflicts with any term or condition of a Rental Agreement, such Vendor Policies shall have no force or effect and the terms of the Rental Agreement shall prevail. No changes to a Rental Agreement shall be made or shall be binding or effective upon either Party unless documented through a written amendment to the applicable Rental Agreement executed by both Parties.

Each person signing this document represents that he/she intends to and has the authority to bind his/her respective Party to these Master Rental Terms and Conditions.

CUSTOMER

(#)

Notice Address:

Address: _____

City, State ZIP: _____

Legal Name: _____

DBA: _____

Federal Tax ID#: _____

Sign: _____

Print: _____

Title: _____

CAREFUSION SOLUTIONS, LLC

Notice Address:

3750 Torrey View Court

San Diego, CA 92130

Sign: _____

Print: _____

Title: _____

Date: _____
Customer: _____

These Master Support Terms and Conditions shall be incorporated into each Support Agreement executed by CareFusion Solutions, LLC (“**CareFusion**”) and the customer identified in the signature block below (“**Customer**”), each a “**Party**” and, collectively, the “**Parties**.” Each Support Agreement shall constitute a separate, independent contract between the Parties. “**Pyxis Products**” means, collectively, the Pyxis® products identified in any single Support Agreement, including the software identified in the Support Agreement, integrated into any of the Pyxis Products or a CareFusion software application delivered to Customer (collectively, “**Software**”). Capitalized terms used herein shall have the meanings defined herein or as used in the Support Agreement or any Rental Agreement or Purchase Agreement that identifies the Pyxis Products. Each separate Support Agreement, together with these incorporated Master Support Terms and Conditions, shall be referred to as a “**Support Agreement**” herein.

- 1. Support Term.** The “**Support Term**” for a Pyxis Product consists of any period of time that CareFusion agrees to support the Pyxis Product for Customer pursuant to the Support Agreement. The period of the initial Support Term for each Pyxis Product shall be the number of months stated in the Support Agreement for that Pyxis Product. The initial Support Term for each Pyxis Product shall commence on the Term Begin Date stated in the Implementation Schedule applicable to that Pyxis Product (“**Implementation Schedule**”). If there is no Implementation Schedule or if there is no Term Begin Date stated in the Implementation Schedule, then the initial Support Term for a Pyxis Product shall commence on the first day of the month following the date that Pyxis Product is “Accepted” pursuant to the Rental Agreement or Purchase Agreement applicable to that Pyxis Product.
- 2. Automatic Continuation of Support Term.** Either Party may terminate the Support Term for a Pyxis Product effective at the conclusion of the initial Support Term for the Pyxis Product by delivering notice of the Party’s election at least sixty (60) days prior to the conclusion of the initial Support Term. If neither Party delivers such notice, then, at the conclusion of the initial Support Term (i) the Support Term for the Pyxis Product shall continue on a month-to-month basis; (ii) the Monthly Support Fee shall be the Monthly Support Fee stated for the Pyxis Product in the then-current Pyxis Product price catalog; and (iii) either Party may terminate this continued Support Term effective upon thirty (30) days prior notice.
- 3. Payment of Monthly Support Fees.** Subject to the provisions of Section 5 herein, Customer shall pay the Net Monthly Support Fee stated in the Support Agreement (“**Monthly Support Fee**”) for each Pyxis Product by check, wire, ACH or EFT on the first day of each month during the Support Term of the Pyxis Product. If Customer does not pay an amount due to CareFusion pursuant to any provision of the Support Agreement on or before the due date, then Customer shall pay a late charge at the rate of 1.5% of the unpaid amount, or the highest rate allowed by the law (whichever is lower), per month, prorated on a daily basis.
- 4. Taxes.** Monthly Support Fees do not include any taxes. Customer shall pay when due any sales taxes and related interest and penalties (except those caused by CareFusion’s failure to collect or remit such taxes) arising from the transactions related to the Support Agreement. If CareFusion pays any amount that Customer is obligated to pay under this Section, then Customer shall promptly reimburse CareFusion.
- 5. Indexed Monthly Support Fee Increases.** CareFusion may by notice increase the then-current Monthly Support Fee for any Pyxis Product effective once every twelve (12) months by a percentage amount no greater than the sum of the then-current Consumer Price Index for medical care as reported by the U.S. Department of Labor plus two percent (2%). Monthly Support Fee increases shall be effective on the anniversary date of the commencement of the initial Support Term for the Pyxis Product.
- 6. Training.** CareFusion shall provide introductory training through the station tutorial for select Pyxis Products. A schedule of available training classes is located on the CareFusion Learning Portal accessible at <http://www.carefusion.com>.
- 7. Basic Services.** CareFusion shall provide the following basic support services (collectively, “**Services**”) to Customer for each Pyxis Product from the time the Pyxis Product is Accepted, through the Term Begin Date and during the Support Term for that Pyxis Product:
 - (a) Remote Support Services. CareFusion shall provide remote support services (“**Remote Support Services**” or “**RSS**”) through CareFusion’s Technical Support Center (“**TSC**”) 24 hours a day, 365 days a year. To permit Remote Support Services, Customer shall provide continuously-connected high-speed Internet access via Secure Socket Layer (**Port 443**). If Customer’s system, connectivity, or personnel prevent CareFusion from performing Remote Support Services on a Pyxis Product related to a request for Services, then (i) CareFusion shall not be obligated to satisfy any response time or Uptime guaranty applicable to that Pyxis Product and (ii) if CareFusion performs field services for the Pyxis Product, Customer shall pay CareFusion’s Time and Materials Fees for the field services. Customer shall permit CareFusion to install and maintain Pyxis Security Module to allow the deployment of Updates/Upgrades by RSS.

Master Support Terms and Conditions

(b) Field Service. CareFusion shall provide on-site field service necessary to keep the Pyxis Products and CareFusion's side of any interfaces performing in accordance with the material specifications of the applicable user manuals ("**Properly Performing**"). If CareFusion determines that it cannot make the Pyxis Products Properly Performing through repair services, then CareFusion shall replace portions of the Pyxis Product as CareFusion determines necessary to make the Pyxis Product Properly Performing.

(c) Field Service During Extended Term. If the Support Term is renewed on a month-to-month basis or is extended beyond the initial Support Term ("**Extended Term**"), CareFusion shall use commercially reasonable efforts to keep the Pyxis Product Properly Performing through repair services only during the Extended Term. If CareFusion cannot repair the Pyxis Product using commercially reasonable efforts during the Extended Term, CareFusion shall have no further service or replacement obligation with respect to that Pyxis Product.

(d) Procedure to Obtain Services. Customer shall promptly contact TSC if the Pyxis Product is not Properly Performing. TSC will work with the Customer to perform initial troubleshooting. If the issue/problem cannot be repaired in a timely manner through telephone and remote support, then CareFusion shall use commercially reasonable efforts to provide field service within twenty four (24) hours of Customer's initial call to TSC regarding the issue. Customer shall provide CareFusion with entry and access to the Pyxis Product to provide regular service and repair. Promptly following the completion of any Field Service, Customer shall perform an audit of the proper communication of transactions between the Pyxis Product and Customer's information system.

(e) Guaranteed Response Time. CareFusion guarantees that dispatched on-site field service representatives will arrive at the location of the Pyxis Product within twenty four (24) hours from the time of dispatch from TSC*. If, due to the sole fault of CareFusion, a field service representative does not arrive within this guaranty period and if Customer provides written notice to CareFusion within ten (10) days following the end of the calendar month in which such dispatch occurred, then, as Customer's sole and exclusive remedy, CareFusion shall credit Customer five percent (5%) of the Monthly Support Fee for the Pyxis Product subject to the response time guaranty.

*Notwithstanding anything to the contrary set forth herein or the Support Agreement, CareFusion guarantees that dispatched on-site field service representatives will arrive at the location of the Pyxis® Control Center within forty-eight (48) hours from the time of dispatch from TSC.

(f) Interface Modification. If CareFusion modifies an interface between a Pyxis Product and Customer's system/network as part of Services, then, upon completion of the modification, Customer shall promptly test the interface to verify that the interface functions properly. Customer's sole remedy related to interface functionality shall be for CareFusion to modify CareFusion's side of the interface to provide full functionality.

(g) Replacement Parts. CareFusion shall adjust and replace non-consumable parts in the Pyxis Products as CareFusion deems necessary to keep the Pyxis Products Properly Performing. CareFusion shall furnish maintenance and replacement parts on an exchange basis.

(h) Pyxis CUBIE® Pockets. CareFusion shall replace Pyxis CUBIE® pockets that fail to work for any reason other than an External Cause.

(i) Preventative Maintenance. At Customer's request, CareFusion shall perform on-site preventative maintenance of Pyxis Products in accordance with CareFusion's internal preventive maintenance schedule (as modified from time to time) for each Pyxis Product.

(j) Software Updates and Upgrades. If CareFusion generally releases an Update/Upgrade to the Software, then CareFusion shall install the Update/Upgrade, deliver notice to Customer of the Update/Upgrade, and Customer shall promptly perform an audit of the proper communication of transactions between the Pyxis Product and Customer's information system. An "**Update**" shall include bug fixes, patches, error corrections, virus updates, minor enhancements or modifications to existing features to maintain the security or operation of the Software. An "**Upgrade**" shall include new applications, functionality enhancements or other improvements to the Software; provided however, an Upgrade shall not include any hardware, third party software, or any software that CareFusion generally licenses as a separate product from the Software.

8. **Non-Covered Items and Services.** The following are excluded from the Services provided by CareFusion under the Support Agreement:

(a) External Causes. If the Pyxis Product is not Properly Performing in part because of abuse, misuse, vandalism, modification, alteration, unauthorized adjustment, unauthorized repair, equipment not installed by CareFusion, a computer virus introduced to the Pyxis Product by a source other than CareFusion, or any other cause external to the Pyxis Product, or Customer prevents Updates/Upgrades thereof to be installed through the Pyxis Security Module or by other means chosen by CareFusion (collectively, "**External Causes**"), then CareFusion shall not be obligated to provide Services regarding the portion or part of the Pyxis Product or the functionality adversely affected by an External Cause.

Master Support Terms and Conditions

(b) Service for External Causes. If Customer requests that CareFusion attempt to correct a Pyxis Product problem attributable to an External Cause, then (i) CareFusion shall promptly use commercially reasonable efforts to perform services and, if necessary, provide replacement parts to make the Pyxis Product Properly Performing; (ii) CareFusion shall provide an invoice to Customer stating the charges for the services and parts used on a time and materials basis at CareFusion's then-current rates and prices (the "Time and Materials Fees"); and (iii) within thirty (30) days after receiving an invoice stating Time and Materials Fees, Customer shall pay the Time and Materials Fees.

(c) Consumables. Services do not include the acquisition, replacement or installation of consumables, which include, but are not limited to, batteries, paper and toner. Notwithstanding the foregoing, CareFusion shall provide and replace light bulbs for Pyxis Products as part of Services provided under the Support Agreement.

9. Service Care Plan. If Customer elects CareFusion's *Service Care Plan* for the Pyxis Products, an additional cost election under the Support Agreement, Services shall include the Basic Services set forth under Section 7, in addition to the following:

(a) Guaranteed Response Time. Instead of the response time guaranty provided under Section 7(e), above, CareFusion guarantees that dispatched on-site service representatives will arrive at the location of the Pyxis Product within the number of hours designated by the Parties under the Support Agreement, either eight (8) or twenty four (24) hours, calculated from the time of dispatch from TSC*. If, due to the sole fault of CareFusion, a service representative does not arrive within this guaranty period and if Customer provides written notice to CareFusion within ten (10) days following the end of the calendar month in which such dispatch occurred, then, as Customer's sole and exclusive remedy, CareFusion shall credit Customer twenty percent (20%) of the Monthly Support Fee for the Pyxis Product subject to the response time guaranty.

*Notwithstanding anything to the contrary set forth herein or the Support Agreement, CareFusion guarantees that dispatched on-site field service representatives will arrive at the location of the Pyxis® Control Center within forty-eight (48) hours from the time of dispatch from TSC.

(b) Guaranteed Product Uptime. A Pyxis Product that is Remote Support Services function enabled ("**RSS-Enabled Pyxis Product**") shall be Properly Performing ("**Up**") at least ninety-seven percent (97%) of the total number of hours during each calendar month of the Support Term ("**Uptime**"). CareFusion will determine if an RSS-Enabled Pyxis Product is not Up beginning on the date and time that CareFusion identifies such product as down (i.e., not in service) by Open Service Case status. "**Open Service Cases**" exclude cases opened at Customer's request for issues other than device break/fix issues. An RSS-Enabled Pyxis Product shall nevertheless be considered Up during (i) the performance of scheduled preventative maintenance; (ii) Customer-initiated delays; (iii) any period that an RSS-Enabled Pyxis Product is not Properly Performing because of an External Cause; and (iv) any period that Customer or Customer's system does not permit CareFusion to provide Services related to the RSS-Enabled Pyxis Product.

The Uptime calculation for the Pyxis Product shall be as follows:

$$((\text{Total \# of devices at a Site} * 24 \text{ Hrs per day} * \text{\# days in the month}) - (\text{Total \# of Service Case hours in the month for that site})) / (\text{Total \# of devices at a Site} * 24 \text{ Hrs per day} * \text{\# days in the month}) = \text{Uptime.}$$
 Service Case hours means the total number of hours required to resolve a reported issue for a Pyxis Product, from the time a case is opened by the TSC until it is closed.

(c) Credit. If collectively, the RSS-Enabled Pyxis Products are not Up for at least ninety-seven percent (97%) of the total number of hours during a calendar month of the Support Term (each, a "**Compensable Month**") and conditioned upon: (i) Customer's providing written notice to CareFusion of such downtime within thirty (30) days following the end of any calendar quarter; and (ii) CareFusion's verification of Customer's claim; then, as Customer's sole and exclusive remedy, CareFusion shall credit Customer five percent (5%) of the Total Monthly Support Fee(s) for all RSS-Enabled Pyxis Product(s) subject to the response time guaranty. Any credit will be applied in the month following the end of the next business quarter.

(d) Unit Relocations. Upon thirty (30) days advance notice from Customer, CareFusion shall relocate a Pyxis Product from the Customer facility in which the Pyxis Product was initially installed to another of Customer's facilities not more than one hundred (100) miles distant.

(e) Communications. CareFusion shall provide the labor, but not the hardware or software, to install upgrades to Customer's network communication methods.

(f) Interfaces. CareFusion shall provide scheduled interface changes, upgrades, and conversions to CareFusion's side of the standard ADT and Billing Interfaces for Pharmacy and Materials Management, as well as Profile Interfaces for pharmacies where the Pyxis Profile system is in place. Interface changes consist of adding features and/or functionality to the standard interfaces.

Master Support Terms and Conditions

10. Service Care Plan with Preferred Support. If Customer elects CareFusion's *Service Care Plan with Preferred Support* for the Pyxis Products, an additional cost election under the Support Agreement, Services shall include the Services set forth under Sections 7 and 9, in addition to the following:

(a) Guaranteed Response Time. Instead of the response time guarantees provided, above, during each calendar month, CareFusion guarantees that on-site service representatives will arrive at the location of the Pyxis Product within four (4) hours from the time of dispatch by TSC* on ninety five percent (95%) of the Service calls placed that calendar month. If, due to the sole fault of CareFusion, such guarantee is not met and if Customer provides written notice to CareFusion of such failure of this response time guaranty within thirty (30) days following the end of any calendar quarter, then, as Customer's sole and exclusive remedy, CareFusion shall credit Customer five percent (5%) of the ship-to Monthly Support Fee for the Pyxis Product(s) subject to the response time guaranty. Any credit will be applied in the month following the end of the next business quarter.

*Notwithstanding anything to the contrary set forth herein or the Support Agreement, CareFusion guarantees that dispatched on-site field service representatives will arrive at the location of the Pyxis® Control Center within forty-eight (48) hours from the time of dispatch from TSC.

(b) Guaranteed Product Uptime. If collectively, the RSS-Enabled Pyxis Products are not Up for at least ninety-seven percent (97%) of the total number of hours during a Compensable Month (as defined in Section 9(b) above, as such Uptime is determined as set forth therein) and conditioned upon: (i) Customer's providing written notice to CareFusion of such downtime within thirty (30) days following the end of any calendar quarter; and (ii) CareFusion's verification of Customer's claim; then, as Customer's sole and exclusive remedy, CareFusion shall credit Customer ten percent (10%) of the Total Monthly Support Fee(s) for all RSS-Enabled Pyxis Product(s) subject to the response time guaranty.

(c) Customized Performance Reporting. CareFusion shall provide a monthly report of Customer's service call activity, TSC cases and performance related to applicable response time or Uptime guarantees within fifteen (15) business days after each calendar month during the Support Term for the Pyxis Products.

(d) Direct Access to TSC Manager Representative. CareFusion shall designate a manager from the TSC who will be available during CareFusion's business hours for Customer's direct access regarding overall quality of TSC support.

(e) Direct Access to Field Service Representative. A local CareFusion Service Manager shall be designated and available to discuss Customer's level of satisfaction with the Services provided and consider any suggestions Customer may have for improving the quality of Services provided under the Support Agreement.

11. Customer Cancellation of On-Site Service. Customer may cancel scheduled on-site Services by delivering notice to TSC five (5) business days prior to the scheduled start date ("**Proper Notice**"). If Customer cancels or otherwise prevents CareFusion from performing scheduled on-site Services without providing Proper Notice, then CareFusion may charge and Customer shall pay CareFusion the reasonable costs incurred by CareFusion because of the lack of Proper Notice.

12. Medication Handling. CareFusion employees and agents ("**CareFusion Personnel**") shall not physically handle Customer's medications. Customer must be physically present and capable of observing CareFusion Personnel during any Service activity or in any situation in which CareFusion Personnel have access to Customer's medications. If Customer fails to provide personnel to handle Customer's medications or to directly supervise CareFusion Personnel regarding Services where medications are present, then CareFusion may re-schedule the affected Service activity and, upon invoice, Customer shall reimburse CareFusion for expenses incurred related to re-scheduling that activity.

13. Mutual Indemnification. Each Party (the "**Indemnifying Party**") shall indemnify and hold the other Party (the "**Indemnified Party**") harmless from and shall defend the Indemnified Party against any claims asserted against the Indemnified Party for losses, injuries, or damages caused by the Indemnifying Party's conduct.

14. Exclusion of Consequential Damages. **NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS OR PROFITS, EVEN IF A PARTY RECEIVES NOTICE IN ADVANCE THAT THESE KINDS OF DAMAGES MIGHT RESULT.** This Section shall not limit a Party's right to indemnification from the other Party pursuant to Section 13 or Customer's obligation to make all payments due under the Support Agreement.

15. Default by CareFusion. If CareFusion fails to cure any breach of CareFusion's obligation to provide Services regarding a Pyxis Product within thirty (30) days (the "**Cure Period**") after delivery of notice from Customer identifying the conduct in breach, then Customer may by notice elect to cancel the then-remaining Support Term for that Pyxis Product.

16. Default by Customer. If Customer fails to pay any payment required by the Support Agreement or by any other contract between the Parties within ten (10) days after CareFusion delivers notice to Customer that the payment is past due, then CareFusion may by notice elect one or more of the following remedies to the extent permitted by applicable law and in addition to and without prejudice to any other remedy available at law or equity: (a) suspend performance of the Support Agreement until Customer satisfies the outstanding obligation(s) and/or (b) cancel one or more Support Terms.

Master Support Terms and Conditions

- 17. Governing Law.** The Support Agreement shall be governed by the laws of the state identified in Customer's Notice Address, below, without regard to that state's conflict of laws provisions.
- 18. Prevailing Party.** If a Party prevails against the other Party regarding any claim arising from or related to the Support Agreement, then the non-prevailing Party shall reimburse the prevailing party for costs, expenses, and attorneys' fees reasonably incurred by the prevailing party regarding such claim.
- 19. Notices.** Any notice from one Party to the other Party related to the Support Agreement shall be in writing and delivered either by hand, overnight courier, or first class mail (certified or registered, return receipt requested, postage prepaid) to the receiving Party's Notice Address stated below. A notice shall be deemed to be given when delivered if by hand or by overnight courier and three (3) days after mailed if by certified or registered mail. Either Party may change its Notice Address upon delivery of notice to the other Party.
- 20. Confidentiality.** Except as required by law, Customer shall not disclose to a third party the terms of or issue any public statement regarding the Support Agreement ("**Confidential Information**") without CareFusion's prior written approval. This confidentiality obligation shall not apply if Customer can reasonably demonstrate that any such Confidential Information (a) was in the public domain; (b) was received from a third party that lawfully possessed the Confidential Information; (c) was otherwise known by Customer prior to the disclosure of Confidential Information; or (d) was independently developed by Customer without reference to, exposure to, use of or disclosure of any Confidential Information. This confidentiality obligation shall survive the termination of the Support Agreement.
- 21. Severability.** If a court or other body of competent jurisdiction declares any term of the Support Agreement invalid or unenforceable, then the remaining terms shall continue in full force and effect.
- 22. Non-Waiver.** No right created by the Support Agreement shall be deemed waived unless specifically and expressly waived in a writing signed by the Party possessing the right.
- 23. Compliance with Laws.** The Parties shall comply with all federal and state laws and regulations applicable to their respective performance of the Support Agreement.
- 24. Access to Records.** For a period of four (4) years after CareFusion has performed the Support Agreement, CareFusion shall make available, upon written request of the Secretary of the Department of Health and Human Services, or upon request of the Comptroller General of the United States, or any of their duly authorized representatives (collectively, the "**Requesting Party**"), the Support Agreement and any books, documents, and records necessary to certify the nature and extent of the costs paid by Customer to CareFusion pursuant to the Support Agreement ("**Access**"). If CareFusion pays a subcontractor more than \$10,000 over a twelve (12) month period to perform the Support Agreement, then CareFusion shall obligate the subcontractor to permit Access to the Requesting Party.
- 25. Applicable Terms of GPO Agreement.** If a Group Purchasing Organization agreement ("**GPO Agreement**") is applicable to a Pyxis Product as of the date of the Support Agreement and if the GPO Agreement states that identified terms of the GPO Agreement are incorporated into the Support Agreement related to that Pyxis Product, then the identified terms of the GPO Agreement shall be incorporated into the Support Agreement related to that Pyxis Product and shall supersede any conflicting term or condition in the Support Agreement applicable to the Pyxis Product.
- 26. Vendor Policies.** CareFusion and its employees shall comply with Customer's reasonable security rules, policies and procedures provided in writing and agreed to in writing in advance by CareFusion ("**Vendor Policies**"). Customer shall notify CareFusion in writing of any substantive amendments to the Vendor Policies. Notwithstanding the foregoing, the Parties understand and agree that any alteration, modification or creation of additional obligations related to the purchase and delivery of Pyxis Products, or Customer's payment obligations or termination rights under a Support Agreement shall become effective only by a written amendment to the Master Support Terms and Conditions or applicable Support Agreement executed by both Parties.
- 27. Entire Agreement; Amendment.** The Support Agreement incorporating these Master Support Terms and Conditions constitutes the entire agreement and understanding of the Parties regarding the subject matter of the Support Agreement and supersedes all prior written and oral agreements, proposals, and understandings between the Parties regarding the subject matter of the Support Agreement. If any of Customer's Vendor Policies conflicts with any term or condition of a Support Agreement, such Vendor Policies shall have no force or effect and the terms of the Support Agreement shall prevail. No changes to a Support Agreement shall be made or shall be binding or effective upon either Party unless documented through a written amendment to the applicable Support Agreement executed by both Parties.

Master Support Terms and Conditions

Each person signing this document represents that he/she intends to and has the authority to bind his/her respective Party to these Master Support Terms and Conditions.

CUSTOMER (#)

CAREFUSION SOLUTIONS, LLC

Notice Address:

Notice Address:

Address: _____
City, State ZIP: _____

3750 Torrey View Court
San Diego, CA 92130

Legal Name: _____
DBA: _____
Federal Tax ID#: _____

Sign: _____
Print: _____
Title: _____

Sign: _____
Print: _____
Title: _____



Implementation Timeline

Project Name: Orange County Fire Authority_MS4000 Implementation

Customer Name: Orange County Fire Authority Site ID: 10046889

Rental/Purchase Agreement Date: 11/10/2011

Submit date: Jan 5, 2012

This Implementation Timeline applies to the Pyxis Products identified in the applicable Customer Order (or, if applicable, Rental Agreement or Purchase Agreement) (the "Agreement"). Capitalized terms in this Implementation Timeline shall have the same meaning as used in the Agreement. CareFusion and Customer shall use commercially reasonable efforts to complete the implementation activities for each implementation stage described below on or before the applicable estimated end date. If Customer fails to provide access or otherwise prevents CareFusion from conducting an implementation activity, then CareFusion may re-schedule the activity and Customer shall reimburse CareFusion for expenses incurred due to re-scheduling.

Plan: Prepare for equipment arrival and product implementation

Task	Customer responsibilities	End Date
Project planning and kickoff	Designate a project manager and a system manager. Acquire any third party interfaces as applicable	Feb 7, 2012
Equipment Logistics	Prepare staging area for test and live equipment	Mar 12, 2012
Training for customer leads	Complete CareFusion facilitated training	Apr 16, 2012
System Design	Determine unit specific inventory. Provide a clean and complete item database. Complete System Setup and Policy and Procedure documentation	May 1, 2012
System Validation (TEST)	Complete system validation	Mar 12, 2012
Project status assessment	Confirm network (including wireless), power, and construction is completed or on target for completion according to project plan	Apr 16, 2012

Execute: Implement project plan

Task	Customer responsibilities	End Date
System build	Enter server database information. Ensure any additional software installations have been completed. Assign and load inventory into equipment	Apr 23, 2012
System validation (PRODUCTION)	Complete system validation	Mar 23, 2012
User training	Attend CareFusion-provided Super User training. Provide Super User-led training to end users	May 11, 2012
Go-live	Work with CareFusion to bring products live	May 14, 2012
Go-live support	Provide a full time resource(s) for a minimum of two days after go-live. Ensure billing information is accurate	May 18, 2012

Term Begin Date:

Note: If previously-installed Pyxis Products are being upgraded or subject to new terms and conditions, then the previously-applicable terms and conditions, including payment terms, for those Pyxis Products shall remain in full force and effect until the Term Begin Date unless otherwise agreed to in writing by the Parties.

If the Agreement is a Rental Agreement, then the Rental Term for each Pyxis Product shall begin on the Term Begin Date. If the Agreement is a Purchase Agreement, then Customer shall pay the Net Purchase Price for each Pyxis Product within 30 days of the Term Begin Date. If, due to the sole fault of CareFusion, a Pyxis Product is not Accepted until after the Term Begin Date, then the Term Begin Date shall be the first day of the month following the date the Pyxis Product is Accepted. Notwithstanding the foregoing, CareFusion reserves the right to cancel the Agreement for any Pyxis Product that is not Accepted by the Term Begin Date, unless such non-Acceptance is due to the sole fault of CareFusion.

06/01/2012

Each person signing this Implementation Timeline represents that he/she intends to and has the authority to bind his/her respective Party to this Implementation Timeline.

Implementation Timeline is valid if signed before: 02/18/2012

Orange County Fire Authority	CareFusion Solutions, LLC.

Sign:	Sign:
Print:	Print:
Title:	Title:
Date:	Date:

Created by: Maureen Russell

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